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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

OASIS EARTH, CENTER FOR BIOLOGICAL DIVERSITY, and INTERNATIONAL MARINE MAMMAL PROJECT/EARTH ISLAND INSTITUTE,

Plaintiffs,

v.

NATIONAL MARINE FISHERIES SERVICE, EUGENIO PIÑEIRO SOLER, in his official capacity as Assistant Administrator for the National Marine Fisheries Service, and HOWARD LUTNICK, in his official capacity as Secretary of Commerce,

Defendants.

Case No. 3:26-cv-13925

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiffs Oasis Earth, Center for Biological Diversity, and International Marine Mammal Project of the Earth Island Institute bring this case challenging Secretary of Commerce Howard Lutnick, Assistant Administrator Piñeiro Soler, and the National Marine Fisheries Service's (collectively, the "Service") failure to issue a 90-day finding on the petition to list the Eastern North Pacific gray whale as a threatened or endangered species, in violation of the Endangered Species Act's nondiscretionary, congressionally mandated deadline.

2. The Eastern North Pacific gray whale population has declined by about 50 percent in the last decade. Records of calving have reported devastatingly low numbers in recent years. In 2026 alone, the Service recorded 192 dead Eastern North Pacific gray whales on the U.S. West Coast between Mexico and Alaska.

3. No later than August 24, 2025, the Service received a petition to list the Eastern North Pacific gray whales as threatened or endangered. This initiated a mandatory process under the Endangered Species Act.

4. The Act states that within 90 days of receiving a listing petition, to the maximum extent practicable, the agency must publish a finding that states whether the petition presents substantial information that listing may be warranted. 16 U.S.C. § 1533(b)(3)(A). This is called a "90-day finding."

5. To date, the Service has not published a 90-day finding for the Eastern North Pacific gray whale. The agency's failure to meet the deadline delays crucial protections for the gray whale, increasing its risk of extinction.

6. Accordingly, Plaintiffs seek an order (1) declaring that the Service violated 16 U.S.C. § 1533(b)(3) by failing to timely issue a 90-day finding for the Eastern North Pacific gray whale and (2) directing the Service to publish a final rule by a date certain.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to 16 U.S.C. § 1540(c), (g) (actions brought under the Endangered Species Act) and 28 U.S.C. § 1331 (federal question).

This Court has the authority to issue declaratory and injunctive relief pursuant to the Endangered Species Act, 16 U.S.C. § 1540(g), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1), because this action is brought against a federal agency and an officer of the United States in his official capacity, the Eastern North Pacific gray whale's range includes Northern California, and Plaintiff International Marine Mammal Project/Earth Island Institute's principal place of business is in the Northern District of California.

9. Pursuant to Civil Local Rule 3-2(c) and 3-2(d), the appropriate intradistrict assignment of this case is either to the San Francisco Division or the Oakland Division because Plaintiff International Marine Mammal Project/Earth Island Institute resides in Alameda County.

PLAINTIFFS

10. Plaintiff OASIS EARTH and its founder, Professor Richard Steiner, advise civil society organizations on policies to address marine conservation issues, including ecological habitat and biodiversity conservation issues in the Arctic, a critical habitat for gray whales. Oasis Earth is a registered 501(c)(3) scientific and educational advisory organization, with a Board of Directors, supporters, and staff.

11. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (Center) is a nonprofit organization incorporated in the State of California. The Center works through science and environmental law to advocate for the protection of endangered, threatened, and rare species and their habitats throughout the United States and abroad. The Center works to ensure the long-term health and viability of animal and plant communities across the United States and elsewhere, and to protect the habitat these species need to survive. The Center's mission recognizes that healthy human societies and biodiversity are closely linked. The Center brings this action on behalf of itself and its members.

12. The Center has more than 130,000 active members. Center members reside throughout the United States, including along the West Coast where Eastern North Pacific gray whales live. The Center has a long-standing interest in the protection of gray whales. For example, the Center has engaged in administrative and legal advocacy to prevent gray whales

from being killed by ships. The Center has taken steps to reduce the chance that fishing gear will entangle, seriously injure, or kill gray whales. The Center has also worked to reduce threats from water pollution, noise pollution, and climate change that threaten gray whales.

13. Plaintiff INTERNATIONAL MARINE MAMMAL PROJECT (IMMP) is a project of the EARTH ISLAND INSTITUTE, incorporated in the State of California. IMMP was founded in 1982 and has more than 75,000 active supporters, many of whom live along the migratory route for the Eastern North Pacific gray whale. IMMP and Earth Island Institute are dedicated to protecting gray whales. IMMP and Earth Island Institute's members seek protection for gray whales and the marine environment upon which they depend through public administrative, legal, and legislative action. IMMP has also conducted programs to protect the integrity and wildlife of Baja California's unique lagoon system, home to many marine mammals and the critical birthing lagoons for gray whales. IMMP has opposed development projects in the lagoons, such as a proposed massive industrial salt plant for the shores of the San Ignacio Lagoon, which would harm gray whales. IMMP has also led efforts to ban the use of gill nets and prevent the entanglement of whales and dolphins in nets, a major hazard for gray whales. IMMP's members and staff regularly visit El Vizcaíno Biosphere Reserve to observe, photograph, and enjoy gray whales.

14. These organizations have members with concrete interests in the conservation of the Eastern North Pacific gray whale and its habitat. The members have studied, observed, and sought protection for this species. Their members derive recreational, scientific, professional, spiritual, aesthetic, and other interests in the gray whale and its habitat along the coasts of California, Oregon, Washington, and Alaska.

15. For example, Professor Steiner of Oasis Earth has engaged in gray whale conservation for decades, including while stationed on the Arctic coast as the University of Alaska's marine advisor for the Chukchi Sea and Northern Bering Sea coast in the 1980s. During that time, he advised coastal Indigenous communities on issues including fisheries, marine mammal biology, oceanography, marine safety, and risks of offshore drilling. In 1983, Professor Steiner was transferred to the small fishing community of Cordova, Alaska, to conduct similar

marine advisory services for the Prince William Sound/North Gulf of Alaska region as a university marine professor. During that time, he created and operated the University of Alaska's marine conservation program and was involved in efforts to reduce risks of oil shipping out of Valdez, Alaska, later serving on the Emergency Response Command Team for the 1989 Exxon Valdez Oil Spill. Professor Steiner also served on the 2005 IUCN Independent Scientific Review Panel for the Sakhalin II Project on western North Pacific gray whales.

16. Professor Steiner interacted with gray whales conducting his graduate marine research off the Oregon coast (for Oregon State University) in the 1970s and as a commercial fisherman off Oregon (Dungeness crab, halibut, albacore tuna) and Alaska (king crab, tanner crab, blackcod, halibut, and salmon) for many years. He observed gray whales and their calves at their Baja nursery lagoons in the 1970s and again in 2023.

17. As a member of the Emergency Response Command Team for the 1989 Exxon Valdez Oil Spill off Alaska, Professor Steiner made aerial observations of gray whales surfacing in Exxon Valdez oil slicks along the Gulf of Alaska coast, and subsequently at least 25 gray whales stranded dead along shorelines of Kodiak Island and further downstream. These observations of the lethal impact of oil spills on gray whales contributed to Professor Steiner's long-time opposition to offshore drilling and seabed mining, given the serious risk posed to gray whales. He has concrete plans to continue observing gray whales and conducting marine research in the future in and around the Gulf of Alaska. Professor Steiner's scientific, conservation and aesthetic interests in gray whales are injured by the Service's ongoing delay to protect gray whales. Professor Steiner authored the August 24, 2025, petition to list gray whales under the Endangered Species Act.

18. One of the Center's members, for example, is a free diver who frequently dives off the California coast to enjoy the underwater world. He enjoys diving off the coast of California and seeing whales, including gray whales, among other marine life, and intends to continue these regular dives in the future. The ocean and its native wildlife, including the gray whale, are part of this member's recreational, spiritual, and aesthetic interests. The decline of the gray whale population has already impaired his ability to enjoy this species, which reduces his

enjoyment of his recreational activities, and the Service's ongoing delay in finalizing Endangered Species Act protections for the gray whale deepens that injury.

19. One of IMMP's members, for example, has organized and led marine mammal watching tours in and around the San Francisco coast and Farallon Islands for 50 years and routinely goes on whale watching trips, including those featuring Eastern North Pacific gray whales, for enjoyment and photography. He has often visited the Baja lagoons where the gray whales give birth. This member's recreational, conservation, and aesthetic interests are injured by the Service's ongoing delay to protect gray whales and the decline of gray whale populations.

20. The Service's failure to comply with the statutory requirement to publish a 90-day finding on the petition to list the Eastern North Pacific gray whale denies the species vital protection that will support its survival and recovery. This delay interferes with the Endangered Species Act's listing process for the gray whale and withholds the safeguards of the Endangered Species Act. For example, federal actions that may affect listed species or their critical habitat—such as water pollution permits, offshore oil and gas activities, seabed mining, and fisheries management actions—require consultation with the Service to ensure they do not jeopardize listed species or adversely modify their critical habitat. During the delay responding to the listing petition, the federal government has removed protections for areas that were closed to fishing, granted exempted fishing permits, approved dredge and fill permits, issued water pollution permits, and authorized a plan for offshore fracking. Once a species is listed, the Service must also designate critical habitat for protection. Additionally, listing would support gray whale survival and recovery through mandated recovery planning and federal funding and conservation programs that are available to threatened and endangered species. Delays are forestalling these lifesaving protections for the gray whale. Therefore, the Service's ongoing violation harms the concrete interests of Plaintiffs and their members.

21. The relief Plaintiffs seek—an order compelling the Service to finalize a 90-day finding for the Eastern North Pacific gray whale—would redress Plaintiffs' and their members' injuries by protecting the gray whale and its habitat, thereby increasing its chances of survival and recovery. This would benefit the educational, scientific, recreational, aesthetic, and spiritual

interests that Plaintiffs and their members have in the gray whale. The organizations and their members have no other adequate remedy at law.

DEFENDANTS

22. Defendant NATIONAL MARINE FISHERIES SERVICE (also known as NOAA Fisheries) is a federal agency within the U.S. Department of Commerce. The Service is the agency to which the Secretary of Commerce has delegated his authority to administer and implement the Endangered Species Act for most marine species, including the Eastern North Pacific gray whale. The Service is responsible for complying with the mandatory deadlines of the Act and has the authority to remedy the violation alleged in this Complaint.

23. Defendant EUGENIO PIÑEIRO SOLER is sued in his official capacity as Assistant Administrator for the Service. In that capacity, he has responsibility for the Service's administration and implementation of the Endangered Species Act for most marine species, including the Eastern North Pacific gray whale, and has authority to remedy the violation alleged in this Complaint.

24. Defendant HOWARD LUTNICK is the Secretary of the U.S. Department of Commerce. As Secretary of Commerce, he has the ultimate responsibility to properly administer and implement the provisions of the Endangered Species Act for most marine species, including the Eastern North Pacific gray whale, and has authority to remedy the violation alleged in this Complaint. Plaintiffs sue Defendant Lutnick in his official capacity.

STATUTORY BACKGROUND

The Endangered Species Act

25. Congress enacted the Endangered Species Act in 1973 "to provide a program for the conservation of . . . endangered species and threatened species." 16 U.S.C. § 1531(b). The Act seeks not only to prevent the extinction of species but also to ensure their survival and recovery. It is considered "the most comprehensive legislation for the preservation of endangered species ever enacted by any nation." *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978).

26. Toward these goals, the Act directs the Secretary of Commerce, through the Service (which administers the statute for most marine species, including the Eastern North

Pacific gray whale), to determine which species of plants and animals are "threatened" and "endangered" and place them on a list of protected species. 16 U.S.C. § 1533. The Act defines "species" to "include[] any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife." *Id.* § 1532(16). An "endangered" or "threatened" species is one "in danger of extinction throughout all or a significant portion of its range" or "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range," respectively. *Id.* § 1532(6), (20).

27. The Endangered Species Act requires the Service to determine whether a species is endangered or threatened because of any one of, or combination of, the following factors: "(A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence." *Id.* § 1533(a)(1).

28. The Service must make listing "determinations . . . solely on the basis of the best scientific and commercial data available." *Id.* § 1533(b)(1)(A).

29. To facilitate prompt and timely listing actions, Congress established a process by which an interested person may petition the Service to protect a species under the Endangered Species Act, with mandatory deadlines for the Service to respond. *Id.* § 1533(b)(3), (b)(6).

30. "To the maximum extent practicable," the Service must determine within 90 days of receiving a petition if it presents substantial information showing the petitioned action may be warranted. *Id.* § 1533(b)(3)(A).

31. If the Service determines that there is substantial information supporting a determination that a species is threatened or endangered, it shall "promptly commence a review of the status of the species concerned." *Id.* "Within 12 months after receiving a petition that . . . present[s] substantial information indicating that the petitioned action may be warranted, the Secretary shall" determine whether listing is warranted. *Id.* § 1553(b)(3)(B).

32. If the Service determines the listing is warranted, it must publish notice in the Federal Register and a complete text of the proposed regulation to implement the listing. *Id.* § 1553(b)(3)(B)(ii), (b)(5).

33. Within one year of publishing the proposal, the Secretary must publish a final rule implementing the decision to list the species and designate its critical habitat. *Id.* § 1553(b)(6)(A).

34. The Endangered Species Act has a suite of substantive and procedural legal protections that apply to species once they are listed as endangered or threatened.

35. For example, section 4(a)(3) of the Act requires the Service to designate "critical habitat" for each endangered and threatened species. *Id.* § 1533(a)(3). A "critical habitat" designation protects (1) the areas occupied by a species at the time of listing that contain the physical or biological features essential to the conservation of the species, (2) and currently unoccupied areas that the Service determines are essential for the conservation of the species. *Id.* §§ 1532(5)(A), 1533(b)(2).

36. Section 7(a)(2) requires all federal agencies to ensure that their actions do not "jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification" of any listed species' critical habitat. *Id.* § 1536(a)(2).

37. Section 9 of the Act prohibits, among other actions, "any person" from causing the "take" of any protected fish or wildlife without lawful authorization from the Service. *Id.* §§ 1538(a)(1)(B), 1539; *see also id.* § 1532(19) (defining "take"). Other provisions require the Service to "develop and implement" recovery plans for listed species, *id.* § 1533(f); authorize the Service to acquire land for the protection of listed species, *id.* § 1534; and authorize the Service to make federal funds available to states to assist in the conservation of endangered and threatened species, *id.* § 1535(d).

STATEMENT OF FACTS

Eastern North Pacific Gray Whales

38. Gray whales are in grave trouble. In 2026 alone, the Service has recorded 192 gray whale deaths along the West Coast between Alaska and Mexico. This is an underestimate of

the actual number of gray whale deaths this year because most dead whales sink or go unobserved and unreported. In the San Francisco Bay Area, 13 gray whales were found dead this year. Along the coast of Washington, 31 gray whales died, and in Alaska 27 have stranded dead ashore. This die-off comes on the heels of several years of increased gray whale deaths. From 2019 to 2023, the Service declared an unusual mortality event after a huge spike of 216 gray whale deaths in 2019.



Stranded dead gray whale at Leadbetter Point State Park, Washington. Photo: John Weldon, NOAA Fisheries permit 18786-03 (2019), CC BY-NC-ND 2.0, https://flic.kr/p/25mtf3T

39. The Eastern North Pacific population of gray whales has declined by about 50% within the last decade. According to the Service's stock assessment report, the abundance was about 26,960 whales in 2015/2016. In 2024/2025, after a concerning unusual mortality event, the Service estimated that the population was between 11,700 and 14,200 whales. Historically, the population may have numbered as many as 100,000 gray whales.

40. To make matters worse, Eastern North Pacific gray whales are experiencing extremely low birth rates. In 2025, only 85 gray whale calves were reported, the lowest number since recording began. There typically were hundreds of calves recorded each year. In recent years, the Eastern North Pacific gray whale population mortality rate has exceeded its

reproductive rate, and thus irrespective of population survey estimates, the population is in decline.

41. While whaling was historically the primary threat to gray whales, now the main cause of the gray whale die-off is starvation due to lack of prey. Gray whales forage in their arctic feeding grounds by skimming the seafloor for small crustaceans and other prey. However, sea ice declines have depleted supplies of algae, which grow under sea ice and nourish the seafloor ecosystem. Thus, the arctic food web is collapsing, resulting in insufficient prey for the gray whales to store reserves in the summer, their primary feeding season, to sustain their long migration.

42. Gray whales are not getting enough food to support their annual migration. Gray whales undertake one of the longest migrations among marine mammals, traveling 12,000–14,000 or more miles to their winter calving grounds off the Mexican coast and then back north to Alaska for the summer. The changing ocean conditions and lack of prey have driven an increase in stranding incidents. Most of the whales that stranded in 2026 were malnourished.

43. Other threats exacerbate the risks of gray whale extinction. Among them, collisions with vessels and entanglement in fishing gear are primary threats.

44. Vessel collisions, or ship strikes, kill many gray whales each year. In 2026, at least 14 gray whales died from blunt-force trauma consistent with a ship strike. In 2025, the Service documented 16 gray whales killed by vessel collisions. This is an underestimate because most ship strikes go unrecorded. Scientists estimate that 80 large whales die off the West Coast each year. A recent study of the San Francisco Bay concluded that one in five gray whales that enter the bay die there, and 40% of those deaths are attributable to ship strikes.

45. Entanglement in fishing gear also threatens gray whales. In 2026, at least three gray whales have been reported entangled in fishing gear off California. In 2025, four gray whales were reported entangled in fishing gear off the U.S. West Coast. Between 2005 and 2024, the Service confirmed 131 gray whale entanglements in fishing gear off the U.S. West Coast. Many whales are entangled in commercial Dungeness crab fishing gear, as well as gillnets and other lines.

46. During warm water events, gray whales may face greater entanglement risk because reduced prey availability can push them to forage along their migration corridor, where fishing activity is concentrated. Even when they are not actively foraging, whales migrating through areas heavily used by fisheries and vessels remain vulnerable to entanglement and ship strikes.

47. Additionally, proposed offshore leasing for seabed mineral exploration and oil and gas drilling in gray whale habitat poses significant risks to the population.

48. These threats, among others, show that the gray whale is imperiled and urgently needs the protection of the Endangered Species Act. The population's dramatic decline, record-low calf production, repeated strandings, and documented deaths from starvation, vessel strikes, and entanglements in fishing gear demonstrate that gray whales are endangered or likely to become endangered in the foreseeable future.

49. Without prompt action, gray whales face worsening ocean conditions and preventable human-caused mortality. Listing the Eastern North Pacific gray whale under the Endangered Species Act is necessary to ensure its conservation and recovery.

Gray Whale Listing History

50. Gray whales first received international protection when the International Whaling Convention protected them in 1946, although some whaling continued. The Eastern North Pacific gray whale population was included on the Endangered Species List in 1970, the precursor to the U.S. Endangered Species Act. It remained listed until 1994, when it was delisted following an impressive population rebound. Unfortunately, that recovery was short-lived.

51. On August 24, 2025, the Service received a petition to list the Eastern North Pacific gray whale authored by Professor Steiner of Oasis Earth.

52. The Service's 90-day finding was therefore due on November 22, 2025. Further, a mandatory 12-month finding was due no later than August 24, 2026.

53. On February 18, 2026, Professor Steiner wrote to the Service requesting an update on the petition. On the same day, the Service responded that it was working on the 90-day finding and "hope[d] to dedicate more time to th[e] petition in the upcoming month(s)."

54. On April 9, 2026, Professor Steiner again wrote the Service requesting an update regarding the status of the petition. On April 10, 2026, the Service responded that it was continuing to work on the action and had no further updates.

55. On June 8, 2026, IMMP submitted a letter to the Service requesting a response to the petition.

56. It has been over a year since the Service received the petition to list the gray whale under the Endangered Species Act.

57. To date, the Service has not published a 90-day finding on the petition to list the gray whale under the Endangered Species Act.

58. The Service's failure to timely publish a 90-day finding on the gray whale petition has also led to a delay in the Service's statutorily required 12-month finding.

59. The Service's 90-day finding is past due.

60. Plaintiffs provided the Service with 60-days' notice of the Endangered Species Act violation, as required by 16 U.S.C. § 1540(g)(2)(A) and (C), by a letter to the Service dated August 25, 2026, explaining Plaintiffs' intent to sue.

61. The Service has not remedied the violations set out in the notice.

62. Until a species receives a final listing determination, it is not afforded any of the protections of the Endangered Species Act. Thus, the agency's delay is withholding necessary protections for gray whales and contributing to their decline.

CLAIM FOR RELIEF

(Endangered Species Act—Failure to Comply with Statutory Listing Deadline)

63. The Center realleges, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

64. The Endangered Species Act requires the Service, "to the maximum extent practicable," to determine within 90 days of receiving a petition if it presents substantial information showing the petitioned action may be warranted. 16 U.S.C. § 1533(b)(3)(A). If the Service determines that there is substantial information supporting a determination of a threatened or endangered species, it shall "promptly commence a review of the status of the

species concerned." *Id.* "Within 12 months after receiving a petition that . . . present[s] substantial information indicating that the petitioned action may be warranted, the [Service] shall" determine whether listing is warranted. *Id.* § 1553(b)(3)(B).

65. The Service received the petition to list the Eastern North Pacific gray whale on August 24, 2025. The Endangered Species Act required the Service to make a 90-day finding on the petition by November 24, 2025. But it has now been more than one year since the petition was filed, and the Service has not yet issued the required 90-day finding. The Service's delay in timely publishing a 90-day finding has also made it impossible to meet the mandatory deadline for the 12-month finding.

66. The Service is in violation of the Endangered Species Act's nondiscretionary duty to timely publish a 90-day finding. 16 U.S.C. § 1533(b)(3)(A).

67. The Court may now issue a declaratory judgement and further relief pursuant to 16 U.S.C. § 1540(g)(1) and 28 U.S.C. §§ 2201–2202.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court enter judgment providing the following relief:

A. Declare that Defendants' failure to issue a timely 90-day finding on the petition to list the Eastern North Pacific gray whale violates the Endangered Species Act and its implementing regulations;

B. Order Defendants to issue and publish a 90-day finding for the Eastern North Pacific gray whales by a date certain;

C. Retain continuing jurisdiction to review Defendants' compliance with all judgments and orders;

D. Award Plaintiffs their costs of this action, including reasonable attorneys' fees, as provided by 16 U.S.C. § 1540(g)(4); and

E. Grant such other relief as this Court deems just and proper.

Dated: November 17, 2026

Respectfully Submitted,

s/ *Miyoko Sakashita*
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ATTESTATION OF CONCURRENCE

Pursuant to Local Civil Rule 5-1(i)(3), Plaintiff's undersigned counsel attests that the other signatory, Co-Plaintiffs' counsel Jessica Blome, concurred in the filing of this Complaint.

Dated: November 17, 2026

/s/ *Miyoko Sakashita*
Miyoko Sakashita (CA Bar No. 239639)